

09:18AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

August 7, 2024

TRANSCRIPT EXCERPT - CONTINUED EXAMINATION OF THOMAS HERBST
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys
Federal Centre, 138 Delaware Avenue
Buffalo, New York 14202
For the Plaintiff

SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.

80 East Spring Street
Williamsville, New York 14221

And

LAW OFFICES OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.

3110 Delaware Avenue
Kenmore, New York 14217

And

OSBORN, REED & BURKE, LLP

BY: JOHN J. GILSENAN, ESQ.

120 Allens Creek Road
Rochester, New York 14618
For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR
Robert H. Jackson Federal Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann_Sawyer@nywd.uscourts.gov

* * * * *

(Excerpt commenced at 9:48 a.m.)

(Jury seated at 9:48 a.m.)

THE COURT: Good morning, everyone.

JURORS: Good morning.

THE COURT: The record will reflect that all our
jurors, again, are present.

I remind the witness that he's still under oath.

And, Mr. Singer, you may continue.

MR. SINGER: Thank you, Judge.

T H O M A S H E R B S T, having been previously duly called
and sworn, continued to testify as follows:

CROSS-EXAMINATION BY MR. SINGER (CONT'D):

Q. Good morning, Mr. Herbst, again.

A. Good morning, Mr. Singer.

Q. You didn't have any pieces of paper, or any type of items
that you referenced over the night hours regarding your

09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:49AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM
09:50AM

1 testimony, correct?

2 A. I did not.

3 Q. And you didn't talk to anybody about your testimony, of

4 course.

5 A. I did not.

6 Q. Good. So where we left off yesterday, we were talking

7 about the meetings that you had leading up to the meeting

8 with Agent Bongiovanni and Peter Gerace on November 23rd of

9 2009, right?

10 A. Regarding -- with probation?

11 Q. Yes.

12 A. Yes.

13 Q. And we talked about how you had not kept a lot of notes

14 regarding some of these meetings or phone calls that led up

15 to the meeting with Peter Gerace.

16 A. That's correct.

17 Q. Okay. So a lot of testimony that you're giving in court

18 is based on your memory, correct?

19 A. Yes.

20 Q. Okay. So with regard to the meeting with Peter Gerace,

21 you testified yesterday that you didn't have any specific

22 notes that you took during that meeting, right?

23 A. The meeting at DEA?

24 Q. Yes.

25 A. No, that's correct.

1 Q. And you didn't write a report about it after the meeting,
2 correct?

3 A. I did not.

4 Q. Okay. But following the 23rd of November, do you
5 remember -- or, following the meeting on the 23rd of
6 November, do you remember having a conversation with
7 Mr. Lepiane about the fact that you had a meeting?

8 A. I'm sure I would have had that conversation, yes.

9 Q. So you recall following up with Mr. Lepiane of, hey, this
10 meeting we've been waiting to get with Peter Gerace has
11 finally happened?

12 A. Yeah, right. That's correct.

13 Q. Okay. And you remember talking to him about the fact
14 that there wasn't anything that substantively was discussed
15 in the meeting that would assist you in your investigation?

16 A. Yes.

17 Q. And you remember talking to him about how you were going
18 to continue to try to work with Peter Gerace to the extent
19 you could?

20 A. That could be true.

21 Q. Okay. And as far as that telephone is concerned,
22 telephone call is concerned, did Mr. Lepiane inform you about
23 what was going to happen with Peter Gerace vis-à-vis his
24 violation of supervision?

25 A. He may have.

09:51AM 1 Q. Do you recall if Mr. Lepiane talked to you about how
09:51AM 2 Mr. Gerace was going to be cited for location monitoring and
09:51AM 3 that was going to be a change to his supervision?
09:51AM 4 A. I don't have a specific recollection about that as I sit
09:51AM 5 here today. But that, I'm sure if it's in his report, that's
09:51AM 6 correct.
09:51AM 7 Q. Did you have any memory of a conversation that you had
09:52AM 8 about the fact that Mr. Gerace was not going to be going to
09:52AM 9 jail as a result of what happened on the Halloween search?
09:52AM 10 A. Yeah, I do have that understanding.
09:52AM 11 Q. Okay. So you at least knew he wasn't going to be going
09:52AM 12 to jail based on the violation?
09:52AM 13 A. Yes.
09:52AM 14 Q. Okay. And when you talked yesterday in your testimony,
09:52AM 15 you were talking about how you left the meeting on the 23rd
09:52AM 16 of November of 2009 at DEA with the impression or assumption
09:52AM 17 that Peter Gerace was going to act as some type of
09:52AM 18 confidential source for the DEA?
09:52AM 19 A. Yes, definitely.
09:52AM 20 Q. And I guess I want to delve into that a little bit more.
09:52AM 21 A. Sure.
09:52AM 22 Q. At the meeting with you and Bongiovanni and Gerace,
09:52AM 23 Mr. Bongiovanni never told you Peter Gerace is a confidential
09:52AM 24 source of mine, correct?
09:52AM 25 A. No. I mean, he never used those words, but that would be

1 an odd thing to say.

2 Q. Yeah. Peter Gerace never said in that meeting I'm a
3 confidential source for the DEA, correct?

4 A. No, of course not.

5 Q. Okay. So neither Bongiovanni or Gerace mentioned the
6 word "confidential source," correct?

7 A. That's correct.

8 Q. Okay. And as far as your case is concerned, you say that
9 after that meeting, based on the assumption that Peter Gerace
10 was going to be working with the DEA, you stopped
11 investigating him?

12 A. Yes, that's correct. I did not stop investigating my
13 case, but I -- that was one of the avenues I was going to
14 pursue to bolster my case, but I stopped pursuing that. I
15 think we -- I don't know if it was you, I think it was
16 Mr. Cooper asked about a sub file. So I stopped
17 investigating the sub file against Mr. Gerace.

18 Q. So you ceased the investigation into potential drug
19 dealing going on at Pharaoh's Gentlemen's Club involving
20 Peter Gerace?

21 A. Yes.

22 Q. So I want to delve into that a little bit more.

23 So like you just testified, that wasn't the only inroad
24 into this cold case file that you were trying to develop,
25 correct?

09:54AM 1 A. I'm not sure what you mean by "inroad" in this context.

09:54AM 2 Q. Sure. So another target of your investigation to help
09:54AM 3 develop leads in this cold case file was a person by the name
09:54AM 4 of Anthony Gerace, correct?

09:54AM 5 A. I know Anthony Gerace, I know he's Peter brother, and I
09:54AM 6 had heard that name as him being involved in narcotics
09:54AM 7 trafficking, too, but I've never personally talked to Anthony
09:54AM 8 Gerace.

09:54AM 9 Q. Yeah. And so I guess what I'm getting at is similar to
09:54AM 10 how you learned about Peter Gerace being involved in
09:54AM 11 narcotics activity, people at your office also brought to
09:54AM 12 your attention that Anthony Gerace was another person who may
09:54AM 13 be involved in narcotics activity?

09:54AM 14 A. Yeah, I definitely was -- I definitely was aware at that
09:54AM 15 time that Anthony Gerace was involved in narcotics activity.
09:54AM 16 I never talked to him or pursued an investigation against
09:55AM 17 him.

09:55AM 18 Q. Yeah. And I guess -- so your group, Squad 4 in the Safe
09:55AM 19 Streets Task Force, you have involvement in what's called
09:55AM 20 OCDETF investigations, correct?

09:55AM 21 A. Yes.

09:55AM 22 Q. And what is an OCDETF investigation?

09:55AM 23 A. Organized Crime Drug Enforcement -- something like that.
09:55AM 24 Drug enforcement.

09:55AM 25 Q. Would you agree Organized Crime Drug Enforcement Task

09:55AM

1 Force?

09:55AM

2 A. Yes.

09:55AM

3 Q. So those particular investigations are looking into

09:55AM

4 organizational defendants or organizations that engage in

09:55AM

5 criminal activity?

09:55AM

6 A. Yes. But the primary work at Squad 4 was the Safe

09:55AM

7 Streets, so it was gang related, so not so much OCDETF.

09:55AM

8 Q. But FBI does have involvement as a task force in OCDETF

09:55AM

9 investigations?

09:55AM

10 A. Yes, absolutely.

09:55AM

11 Q. And you remember a couple different people being

09:55AM

12 investigated at the same time. Do you remember a David

09:56AM

13 Gambino being investigated as part of an OCDETF

09:56AM

14 investigation?

09:56AM

15 A. I believe David Gambino may have been before my time. It

09:56AM

16 might have been continuing. And I'm not sure the FBI was the

09:56AM

17 primary investigative agency on that case, I don't have any

09:56AM

18 personal -- I know his name, I know what he was involved in.

09:56AM

19 I know he's, like, into drug trafficking. I never personally

09:56AM

20 investigated him. I don't even know if anybody in our office

09:56AM

21 did, but I'm certainly aware of him.

09:56AM

22 Q. Are you aware of David Reynolds being investigated and

09:56AM

23 prosecuted?

09:56AM

24 A. I don't know David Reynolds' name.

09:56AM

25 Q. How about Ralph Acquino? Do you recall that name as part

09:56AM 1 of your --

09:56AM 2 A. I don't know that name either.

09:56AM 3 Q. So you do remember Gambino?

09:56AM 4 A. I do.

09:56AM 5 Q. But you don't remember the other two?

09:56AM 6 A. That's correct.

09:56AM 7 Q. And you do remember receiving information that Anthony

09:56AM 8 Gerace is somebody who was involved in potential narcotics

09:56AM 9 activity who was under investigation?

09:56AM 10 A. Yes.

09:56AM 11 Q. So Anthony Gerace, as you mentioned previous, is a

09:56AM 12 brother to Peter Gerace, correct?

09:56AM 13 A. That's correct.

09:56AM 14 Q. And so he shares the same familial connection to the

09:57AM 15 Todaros that Peter Gerace does, right?

09:57AM 16 A. He does.

09:57AM 17 Q. And he's also somebody who potentially, if you garnered

09:57AM 18 leverage, could have potentially been used to get inside or

09:57AM 19 used as a source for these cold case murders you're trying to

09:57AM 20 investigate?

09:57AM 21 A. Yes, that's true.

09:57AM 22 Q. But you didn't take any type of investigative steps to --

09:57AM 23 A. That's --

09:57AM 24 Q. -- go about doing that --

09:57AM 25 A. That's --

09:57AM 1 **THE COURT:** One at a time, guys.

09:57AM 2 **BY MR. SINGER:**

09:57AM 3 Q. -- doing that with Anthony Gerace, correct?

09:57AM 4 A. That's correct.

09:57AM 5 Q. So getting back to Peter Gerace, you never followed up
09:57AM 6 with Special Agent Bongiovanni regarding whether his
09:57AM 7 cooperation with Peter Gerace was something that was still
09:57AM 8 ongoing, right?

09:57AM 9 A. I did not.

09:57AM 10 Q. And you didn't follow up with Special Agent Bongiovanni
09:57AM 11 regarding whether the cooperation with Peter Gerace was
09:57AM 12 completed, correct?

09:57AM 13 A. No.

09:57AM 14 Q. When you came to the assumption that Peter Gerace was
09:58AM 15 acting as some type of confidential source for the DEA, I
09:58AM 16 know you stopped your investigation, but did you provide
09:58AM 17 Special Agent Bongiovanni with any of the materials?

09:58AM 18 **MR. COOPER:** Objection as to the form of the
09:58AM 19 question, Judge. When you came to the assumption that.

09:58AM 20 **MR. SINGER:** That's what he testified to, Judge.

09:58AM 21 **MR. COOPER:** That's not what he testified to, Judge.

09:58AM 22 **THE COURT:** Overruled.

09:58AM 23 **BY MR. SINGER:**

09:58AM 24 Q. So, again, when you came to the assumption that Peter
09:58AM 25 Gerace was going to be used as a confidential source by the

09:58AM 1 DEA, did you turn over any of your investigative files
09:58AM 2 regarding the activities that Peter Gerace was involved in?
09:58AM 3 A. No.
09:58AM 4 Q. And did you turn them over to Special Agent Bongiovanni?
09:58AM 5 A. No.
09:58AM 6 Q. Did you turn them over to the DEA in general?
09:58AM 7 A. I did not.
09:58AM 8 Q. You never followed up in any way whatsoever with the DEA
09:58AM 9 regarding what was going on with Peter Gerace?
09:58AM 10 A. No, I -- I had the meeting with Agent Bongiovanni
09:58AM 11 regarding Peter Gerace and, you know, based on that meeting
09:59AM 12 and the calls from DEA to the FBI, and the conversation I had
09:59AM 13 with my supervisor at some point, I decided not to pursue
09:59AM 14 that after we knew of investigation because I thought that
09:59AM 15 Peter Gerace was -- meant more to DEA than he did to me, and
09:59AM 16 I had other avenues to pursue.
09:59AM 17 Q. And as far as the cold case files is concerned, we talked
09:59AM 18 about how you didn't use Peter Gerace to get any inroads in
09:59AM 19 that file.
09:59AM 20 A. That's correct.
09:59AM 21 Q. And we talked about how you didn't use Anthony Gerace to
09:59AM 22 get any inroads on that file?
09:59AM 23 A. That's correct.
09:59AM 24 Q. And before you retired, that file wasn't closed out,
09:59AM 25 correct?

09:59AM
09:59AM
09:59AM
09:59AM
09:59AM
09:59AM
09:59AM
09:59AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:00AM
10:01AM

1 A. It was not.

2 Q. Okay. How many other cases do you think you investigated

3 during that time period besides this murder investigation

4 that you wanted to get into again?

5 A. Maybe five or six at one time, including -- including a

6 wire. You know --

7 Q. Yeah. And I guess, you know, what I'm getting at is you

8 joined Safe Streets Task Force when again?

9 A. I went to the FBI office in Buffalo in November of 2007,

10 sometime right after Thanksgiving. I was on another squad

11 for a short period of time. So sometime in 2008, I can't

12 tell you exactly.

13 Q. And you retired from FBI Buffalo at what point?

14 A. 2013.

15 Q. And during that time period, '08 to '13, how many

16 different cases do you think you investigated on Squad 4?

17 A. Boy. At some point I switched to a different squad. But

18 I would say a half dozen, maybe.

19 Q. So this cold case murder case was one of those cases?

20 A. Yes.

21 Q. And the Peter Gerace case was one of those cases?

22 A. Peter Gerace was, again, a sub file of the main file that

23 I was investigating. So, yes. But I'm not counting it as a

24 separate case, when I gave you the number of a half dozen,

25 but I'm not counting it as a separate case.

10:01AM 1 Q. So you mentioned that one of those other cases that you
10:01AM 2 were working on, that involved a wire investigation?

10:01AM 3 A. Yes.

10:01AM 4 Q. And that's a pretty intensive type of investigation?

10:01AM 5 A. Yes, sir.

10:01AM 6 Q. How many hours do you think you put into that one
10:01AM 7 particular case?

10:01AM 8 A. A lot.

10:01AM 9 Q. Yeah. I guess, you know, I know -- we may know what "a
10:01AM 10 lot" is, but if you can explain to the jury: What does "a
10:01AM 11 lot" mean in your parlance?

10:01AM 12 A. More than Monday through Friday, and more than more than
10:01AM 13 9 to 5. But each day is different, obviously.

10:01AM 14 Q. So those cases require a substantial amount of resources
10:01AM 15 and attention?

10:01AM 16 A. Absolutely.

10:01AM 17 Q. And the other cases that you're working on, did they
10:01AM 18 involve wires or any other type investigation?

10:01AM 19 A. They were other than wires.

10:01AM 20 Q. Were there resources that were devoted to those cases
10:01AM 21 that went in excess of the cold case murder case we're
10:01AM 22 talking about?

10:01AM 23 A. My resources?

10:01AM 24 Q. Yeah.

10:01AM 25 A. Yeah.

1 Q. And it's a fair statement that those cases were more of a
2 focus of your time when you're with -- with Squad 4 and Safe
3 Streets?

4 A. I think they were more of a priority of the squad. My
5 main focus and priority would have been the cold case
6 homicide, but we don't need to go in depth on this, but it's,
7 you know, the focus of the Squad was Safe Streets. Although
8 we had, you know, that you -- you characterized it correctly,
9 Squad 4 was the umbrella squad. We had all the violent crime
10 violations, but -- and Organized Crime. But Safe Streets was
11 the main priority, and you have limited resources. So, the
12 cases that fit into the Safe Streets umbrella would have
13 been, certainly, the supervisor's priority.

14 **MR. SINGER:** Understood. Thank you very much.

15 Agent Herbst, I don't have any further questions.

16 **THE WITNESS:** Thank you.

17 **THE COURT:** Redirect?

18 **MR. COOPER:** Just briefly, Judge.

19
20 **REDIRECT EXAMINATION BY MR. COOPER:**

21 Q. Good morning, Special Agent Herbst.

22 A. Good morning, sir.

23 Q. You were asked some questions on cross-examination just
24 maybe two minutes ago about whether you provided Special
25 Agent Bongiovanni with your investigative materials into

10:03AM 1 Peter Gerace's drug trafficking; do you remember when he
10:03AM 2 asked you those questions?

10:03AM 3 A. I do.

10:03AM 4 Q. Can you remind the jury, what did the defendant say to
10:03AM 5 you when you told him about the drug case that you had going
10:03AM 6 about Peter Gerace?

10:03AM 7 A. He indicated it was not a very good case.

10:03AM 8 Q. Did he seem interested in gathering your materials and
10:03AM 9 pursuing the case?

10:03AM 10 A. Oh, no. He wasn't going to pursue a case against Peter
10:03AM 11 Gerace, because Peter Gerace was working with him. But
10:03AM 12 that's not the way it works.

10:03AM 13 Q. He kind of pooh-poohed your case, right?

10:03AM 14 A. He did.

10:03AM 15 Q. Did anybody at the DEA ask you for your materials?

10:03AM 16 A. No.

10:03AM 17 Q. If they had, if he had called you and said, hey, Tom, can
10:03AM 18 you share your investigative materials with us? Would you
10:03AM 19 have done that?

10:03AM 20 A. Sure.

10:03AM 21 Q. You were also asked some questions on cross-examination
10:04AM 22 about an -- I guess the word was used in the form of the
10:04AM 23 question that it was an assumption that Peter Gerace was this
10:04AM 24 defendant's source; do you remember being asked that
10:04AM 25 question?

1	A. I do.
---	----------

2 | Q. Okay. During the course of your lengthy career at the

3 | FBI, have you had situations before where an informant has

4 | been handed from one agency to another agency, or a

5 | cooperator has been shared?

6 | A. It happens. I don't know if I've had personal

7	experience.
---	-------------

8 | Q. Okay. Did the defendant say to you during that meeting,

9 | Tom, here's Peter, he can become your source?

10	A. No.
----	--------

11 | Q. Was there any form of those words at all used?

12	A. No.
----	--------

13 | Q. Was there a discussion about, hey, work with the FBI and

14 | help them?

15	A. No.
----	--------

16 | Q. Did the defendant tell Peter Gerace in your presence,

17 | hey, if you work with the FBI, maybe you can get yourself out

18 | of trouble?

19	A. No.
----	--------

20 | Q. Did that topic come up at all?

21	A. No.
----	--------

22 | Q. You were asked some questions as well on

23 | cross-examination about when's the last time you've looked at

24 | some of your files and what reports you wrote, right?

25	A. Correct.
----	-------------

10:05AM 1 Q. Was there any substantive information conveyed to you at
10:05AM 2 all during the meeting with Peter Gerace and this defendant?
10:05AM 3 A. No.
10:05AM 4 Q. Was there anything to write in a report?
10:05AM 5 A. No.
10:05AM 6 Q. If the defendant had told you here's Peter Gerace, he has
10:05AM 7 information on kilo-level cocaine traffickers, you can use
10:05AM 8 him; would you have documented that?
10:05AM 9 A. Yes.
10:05AM 10 Q. He didn't tell you that, did he?
10:05AM 11 A. He did not.
10:05AM 12 Q. You were asked some questions about the last time you've
10:05AM 13 looked at files; do you remember that?
10:05AM 14 A. Yes.
10:05AM 15 Q. You retired in 2013, right?
10:05AM 16 A. That's correct.
10:05AM 17 Q. Did you steal files from the FBI and hide them in your
10:05AM 18 basement?
10:05AM 19 A. No.
10:05AM 20 **MR. COOPER:** I have no further questions, Judge.
10:05AM 21 **THE COURT:** Anything more, Mr. Singer?
10:05AM 22 **MR. SINGER:** Yeah.
10:05AM 23
10:05AM 24 **RECROSS-EXAMINATION BY MR. SINGER:**
10:05AM 25 Q. So, Agent Herbst, at this meeting with Peter Gerace, I

1 know you have a limited recollection of it, but I want to get
2 into that a little bit more because you just got asked
3 questions on redirect.

4 Did Peter Gerace talk to you about any information that
5 he had?

6 A. No.

7 Q. Did Peter Gerace tell you about cocaine information that
8 he may have had?

9 A. No.

10 Q. Did Peter Gerace talk to you about why he wanted to
11 cooperate with you vis-à-vis his violation?

12 A. No.

13 Q. So he didn't say much of anything, right?

14 A. He did not.

15 Q. And did you ask him any specific questions about
16 information that he had?

17 A. No.

18 Q. So you never asked him any questions about whether he
19 knew something about cocaine dealers?

20 A. No. The meeting was more -- it was an odd meeting. But
21 it was more, again, I went over to the DEA office, I met with
22 Agent Bongiovanni initially, went down to the mezzanine
23 level. And then I believe Mr. Gerace called, and Agent
24 Bongiovanni told him to meet us at the -- in the mezzanine
25 level as he walked in the lobby. And we had the meeting.

1 It was kind of, like, a get to know each other kind of
2 meeting. I don't know how to describe it. But it wasn't a
3 substantive meeting. And I had -- I had already met
4 Mr. Gerace.

5 Q. Again, so, this is somewhat similar to the same meeting
6 you had with Peter Gerace at Pharaoh's Gentlemen's Club back
7 on Halloween of 2009, correct?

8 A. I think that's a correct characterization.

9 Q. So you're just gabbing about things that don't have
10 anything to do with cases?

11 A. Yes, sir.

12 Q. Building a rapport?

13 A. Yes.

14 Q. But you're not getting down to the brass tacks of, hey,
15 this is the information that I have to provide you?

16 A. That's correct.

17 Q. And you've had situations before in your career where the
18 hope is, is that a person may be developed as a source,
19 right?

20 A. Yes.

21 Q. But ultimately that doesn't happen, correct?

22 A. That's correct.

23 Q. Because sometimes a source is not willing to move forward
24 with the information they have and tell you about it,
25 correct?

1 A. That's correct.

2 Q. And there could be a variety of reasons in your training
3 and experience why that happens, correct?

4 A. That's correct.

5 Q. So, for instance, a source can get fearful about
6 retaliation and, therefore, not share that information,
7 correct?

8 A. That's correct.

9 Q. Or a source can no longer be subject to the same type of
10 leverage that you think you may have, and therefore they make
11 the conclusion I don't really have to cooperate here,
12 correct?

13 A. Correct.

14 **MR. COOPER:** I would object, outside the scope.

15 **THE COURT:** No, I don't think so. Overruled.

16 **THE WITNESS:** That's correct.

17 **BY MR. SINGER:**

18 Q. That's correct. So you learned about later, like you
19 talked about on cross-examination, that Mr. Lepiane's office
20 was going to cite Mr. Gerace for a violation, correct?

21 A. Correct.

22 Q. But that violation was only going to require location
23 monitoring?

24 **MR. COOPER:** Objection. Again, outside redirect,
25 Judge.

10:08AM 1 **THE COURT:** No. Overruled.

10:08AM 2 **THE WITNESS:** Correct.

10:08AM 3 **BY MR. SINGER:**

10:08AM 4 Q. Wasn't going to involve jail time anymore, correct?

10:08AM 5 A. Correct.

10:08AM 6 Q. And after learning that fact, you never heard from Peter
10:08AM 7 Gerace again, correct?

10:08AM 8 A. Well, I wouldn't have expected to hear from Peter Gerace.

10:08AM 9 I would have expected -- in that context, I would have

10:08AM 10 expected to hear from Agent Bongiovanni, you know, if, in

10:08AM 11 fact, the FBI was getting involved in the investigation, but

10:08AM 12 I didn't expect to hear from Peter Gerace.

10:08AM 13 Q. But you didn't hear from DEA after that point either, did
10:08AM 14 you?

10:08AM 15 A. I did not.

10:09AM 16 **MR. SINGER:** Thank you. I have no further questions,
10:09AM 17 Judge.

10:09AM 18 **THE COURT:** Anything more?

10:09AM 19 **MR. COOPER:** No, thank you, Judge.

10:09AM 20 **THE COURT:** You can step down, sir.

10:09AM 21 **THE WITNESS:** Thank you, Your Honor.

22 (Witness excused at 10:09 a.m.)

23 (Excerpt concluded at 10:09 a.m.)

24 * * * * *

25

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on August 7, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT INDEX

EXCERPT - CONTINUED EXAMINATION OF THOMAS HERBST

AUGUST 7, 2024

W I T N E S S

P A G E

T H O M A S H E R B S T

2

CROSS-EXAMINATION BY MR. SINGER (CONT'D) :

2

REDIRECT EXAMINATION BY MR. COOPER:

14

RECROSS-EXAMINATION BY MR. SINGER:

17